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ATTORNEYS FOR APPELLEE:

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DERELL QUAN BAILEY,)
)
Appellant-Defendant,)
)
vs.) No. 45A05-0807-CR-425
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0702-FB-19
Cause No. 45G01-0702-FB-21
Cause No. 45G01-0702-CM-1

BAKER, Chief Judge

Appellant-defendant Derell Quan Bailey appeals his convictions for two counts of Robbery,¹ a class B felony, Criminal Mischief,² a class B misdemeanor, and Battery,³ a class C felony. Specifically, Bailey argues that his convictions must be set aside because the trial court abused its discretion in admitting hearsay testimony of several witnesses at trial. Concluding that the hearsay statements were merely cumulative of other evidence that was properly admitted, we find no reversible error and affirm the judgment of the trial court.

FACTS

Sometime during the evening of November 11, 2006, Nicholas Cooper and his friend, Christine Fairchild, drove to Cooper's residence in the Summerwood Apartments (Summerwood) in Merrillville. As Cooper was carrying some groceries to his apartment building, two men, who were later identified as Bailey and Joseph Durden, approached him. Both men had scarves wrapped around their mouths and one of them grabbed Cooper's arm and placed a gun to his neck. Thereafter, the robber ordered Cooper to empty his pockets as the other man "stood watch" on the sidewalk. Tr. p. 172-73.

After realizing that Cooper had no valuables in his pocket, the robber pointed to Fairchild's vehicle and asked Cooper if there was anything inside. Although Cooper explained that the vehicle was not his, the robber continued pointing the gun at him.

¹ Ind. Code § 35-42-5-1.

² Ind. Code § 35-43-1-2.

³ I.C. § 35-42-2-1.

Cooper then told Fairchild to give the man “everything that she had.” Id. at 176, 206, 209. The other masked man on the sidewalk also ordered Fairchild to give them her property. After Fairchild handed the men \$200, they ran toward a vehicle that was parked in the roadway. Cooper and Fairchild ran inside the apartment building. Shortly thereafter, Cooper heard two gunshots and the sound of a car door slamming and tires squealing.

Shannon Kirkland, also a Summerwood resident, was taking out the trash the night that Cooper and Fairchild were robbed. At some point, Kirkland heard the gunshots and discovered that one of her dogs had been shot in the leg and the other had been shot in the neck. One of the dogs died, and the other one underwent reconstructive surgery at Purdue University to repair his leg at a cost of more than \$3000.

On November 15, 2006, Chris Shurbaji drove to his Summerwood residence after work. As Shurbaji was parking his vehicle, Bailey and Durden approached and one of them placed a gun to the back of Shurbaji’s head. Both men were armed and wearing masks. When Shurbaji turned around, one of the men demanded his money and cellphone. Although Shurbaji attempted to wrestle the gun away from one of the men, he was struck in the head with the weapon. The men then took Shurbaji’s cash and phone. During the robbery, one of the men’s masks fell off. Shurbaji was then ordered to return to his vehicle and not to turn around or he would be shot.

After Shurbaji got into his vehicle, he noticed that the men were fleeing in a red, four-door, late 1990 model Pontiac. Shurbaji began to follow the vehicle and memorized

the license plate number. At some point, one of the men leaned out of the window of the Pontiac and fired several shots at Shurbaji.

Shurbaji continued to follow the Pontiac until it drove into a subdivision. At that point, Shurbaji drove to the Merrillville police station and reported the incident. Detective Jeff Rice checked the Bureau of Motor Vehicle (BMV) records and discovered that the vehicle was registered to Durden's mother, L'Tanya.

During the investigation, Detective Rice learned that L'Tanya let her daughter, Ja'Taun, use her red Pontiac to drive to and from school. Detective Rice prepared a photo array, and Shurbaji identified Durden as the robber whose mask had fallen off during the robbery. Detective Rice also interviewed Ja'Taun. She told Detective Rice that Durden and Bailey had taken the vehicle without her permission on November 15. Ja'Taun also told Detective Rice that Bailey and Durden were laughing about an incident that had occurred on November 11, when two dogs had been shot. Bailey told Ja'Taun that he had shot the dogs while he was running from the scene of the robbery.

On February 16, 2007, the State charged Bailey with criminal mischief as a class B misdemeanor under Cause CM-1, robbery, a class B felony, under Cause FB-19, and robbery, a class B felony, and battery, a class C felony, under Cause FB-21. On May 13, 2008, the State amended the FB-21 charges and included Durden as an accomplice. The trial court subsequently granted the State's motions to join the cause numbers.

At Bailey's jury trial that commenced on May 19, 2008, his girlfriend, Ebony Carpenter, testified that on one evening in November, Durden and Bailey left Durden's

Summerwood apartment. After the men returned, Bailey stated that they had robbed a man and a woman and that Bailey had shot two dogs. Bailey also indicated to Carpenter that he “robbed the dude while Joseph stood by the girl.” Tr. p. 440. Carpenter also testified that after the first robbery, there was another evening when Carpenter was at Durden’s Summerwood apartment with Bailey. Durden borrowed his sister’s Pontiac, and Durden, Bailey, and Carpenter drove toward the entrance to Summerwood. Durden instructed Carpenter to sit in the driver’s seat as he and Bailey exited the vehicle. Approximately five minutes later, Bailey ran past the car and told Carpenter to “go.” Id. At 446. Carpenter began to drive out of the apartment complex parking lot when she saw an SUV approaching her from behind. At some point, Durden approached and knocked on the passenger side window of the Pontiac. Carpenter opened the door and Durden entered. Carpenter then proceeded to the highway and a man in the SUV shot at the Pontiac and Durden returned fire. After following Durden and Carpenter to a subdivision, the SUV drove away. Durden and Carpenter then drove to Carpenter’s home.

James Donald, a friend of Bailey, also testified at trial. According to Donald, Bailey told him that he and Durden had robbed two people and that two dogs had been shot during the incident. Bailey also told Donald that he had a .38 Special revolver and that Durden had a .40 Hi-Point. Donald further testified that Bailey told him that he and Durden had robbed another man at Summerwood. Bailey indicated that they had taken everything but the man’s car keys and when the man got into his vehicle, Bailey fled the

scene and the man followed Durden and Carpenter in his truck. Bailey told Donald that he had been wearing “[a] black hoodie, black shoes, [and] black pants” when the incidents occurred. Tr. p. 497.

When the prosecutor questioned Ja’Taun about Bailey and Durden’s involvement in the robberies and the shooting of the dogs, she was permitted to testify on direct examination about her conversations with both men. The prosecutor also questioned L’Tanya about the incidents. On direct examination, L’Tanya was asked about the comments that Durden allegedly made to her and statements that she supposedly made to Detective Rice regarding Durden and Bailey’s involvement in the crimes. Over Bailey’s objection, the trial court allowed L’Tanya to testify on the basis that the State was laying a foundation to question her later about the statements that she allegedly made to Detective Rice. The trial court also allowed Detective Rice to testify about the statements that Bailey had allegedly made to Ja’Taun and L’Tanya, notwithstanding Bailey’s objection that Detective Rice’s testimony contained inadmissible hearsay.

Bailey was found guilty as charged and was sentenced to concurrent terms of twelve years for robbery and five years for battery under Cause FB-21. Bailey was also sentenced to twelve years for robbery under Cause FB-19 and to six months for criminal mischief under Cause CM-1. The trial court ordered the sentences under Cause FB-19 and FB-21 to run consecutive to each other and concurrent with the mischief conviction under Cause CM-1. Bailey now appeals.

DISCUSSION AND DECISION

Bailey claims that he is entitled to a new trial because the trial court abused its discretion in admitting hearsay evidence at trial. Specifically, Bailey argues that his convictions must be reversed because Ja'Taun and L'Tanya were improperly allowed to testify about statements that Durden purportedly made to them regarding Bailey's involvement in the offenses. Bailey also argues that it was reversible error to allow Detective Rice to testify about the conversations that Ja'Taun and L'Tanya allegedly had with Durden as to Bailey's participation in the crimes.

We initially observe that the admission of evidence is within the sound discretion of the trial court and will be reversed only where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Warr v. State, 877 N.E.2d 817, 822 (Ind. Ct. App. 2007), trans. denied. Moreover, errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party. Coleman v. State, 694 N.E.2d 269, 277 (Ind. 1998).

Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ind. Evidence Rule 801(c). However, the admission of hearsay evidence is not grounds for reversal where it is merely cumulative of other evidence admitted. Robinson v. State, 693 N.E.2d 548, 553 (Ind. 1998). Moreover, a statement is not hearsay if "the statement is offered against a party and is . . . the party's own statement." Evid. R. 801(d)(2).

Even assuming for argument's sake that Ja'Taun, L'Tanya, and Detective Rice's testimony contained improper hearsay evidence, the record demonstrates that Carpenter also testified regarding Bailey's actions and involvement in the offenses. More specifically, Carpenter testified that Bailey told her that he and Durden had "robbed a man and a woman" and that "Bailey had shot two dogs." Tr. p. 437-39, 460-63. Bailey also admitted to Carpenter that he "robbed the dude while Joseph stood by the girl." Id. at 440. Carpenter also testified regarding the incident on February 15, when Shubaji followed the vehicle that she was driving and fired shots at the car. Id. Moreover, Carpenter acknowledged on direct examination that Bailey commented to her that he and Durden had "robbed a man" and "hit him in the head." Id. at 451, 453. Finally, as discussed above, Donald testified that Bailey admitted his involvement in those offenses to him. Id.

In examining this evidence, it is apparent that the statements Bailey made directly to Carpenter and Donald were properly admitted into evidence at trial. See Banks v. State, 761 N.E.2d 403, 406 (Ind. 2002) (holding that a party's own statement that is offered against that party is not hearsay). Therefore, even if we were to conclude that portions of Ja'Taun, L'Tanya, and Detective Rice's testimony contained inadmissible hearsay evidence, the trial court's admission of that testimony was harmless error. Therefore, Bailey has failed to establish reversible error because the improper testimony was merely cumulative of Bailey's own admission of his involvement in the crimes. See Jester v. State, 724 N.E.2d 235, 240 (Ind. 2000) (holding that although the trial court

erred in allowing hearsay testimony of twelve witnesses, the defendant was not entitled to a reversal because that evidence was cumulative of other evidence that was properly admitted).

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.